

ADDENDUM REPORT

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

a9 [PR-PC] DA12/0170 Halcyon House and Paper Daisy Restaurant - Lot 100
DP 1208306 No. 19-25 Cypress Crescent, Cabarita Beach

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you
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LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Making decisions with you
- 2.1 Built Environment
- 2.1.2 Development assessment - To assist people to understand the development process and assess applications lodged with Council to achieve quality development outcomes and land use decisions.

ROLE: **Provider**

SUMMARY OF REPORT:

Updated Summary

Council at its meeting of 1 June 2017 resolved as follows:

- "1. ATTACHMENT 4 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-
 - (a) personnel matters concerning particular individuals (other than councillors)
2. Council defer this item and a report be brought back to 6 July 2017 Planning Committee meeting.
3. A warning letter be issued by the General Manager to the owners of Halcyon House and Paper Daisy restaurant that any further breaches of the hours of use or noise limits will result in fines or civil enforcement."

In accordance with the Point 2 of the resolution the report is now being resubmitted for Council's determination.

Original Summary

Council has received written complaints regarding the operation of the restaurant that forms part of the motel known as Halcyon House at Cabarita Beach. The restaurant within is called Paper Daisy.

ADDENDUM REPORT

The complaints made include hours of operation, noise, car parking, location of rubbish bins and compliance with the use conditions of consent.

The latter issue is the pivotal issue as the other items generally stem from use of the restaurant for general public use. Conditions 11 and 12 of the development consent are the key conditions.

11. *This development consent approves the construction of alterations and additions to the existing motel only to be used by guests and staff of the motel only and other ancillary activities.*
12. *The use of the motel for members of the general public or for functions, parties or the like is permitted on an ancillary basis to the primary function of the premises as a motel.*

The issue that requires resolution is whether the restaurant component of the motel should be confined to use by the patrons of the accommodation component other than for ancillary general public use and ancillary functions, parties or special events.

The proponents agree that condition 12 (at least) confines the use of the motel (see email dated 10 May 2017 at Attachment 1).

The restaurant operates for all customers 7 days per week for breakfast from 7am to 11am, lunch 12pm to 3pm and dinner 6pm to 10pm.

The proponents have indicated they would like to amend the consent to remove the use restriction and would prefer Council's in principle support prior to seeking the amendment.

RECOMMENDATION:

That:

1. **ATTACHMENT 4 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
 - (a) *personnel matters concerning particular individuals (other than councillors)*
2. **Council, in terms of further consideration of DA12/0170 Halcyon House and Paper Daisy Restaurant - Lot 100 DP 1208306 No. 19-25 Cypress Crescent, Cabarita Beach, endorse the following:**

The General Manager advises the proponents in writing the following:

1. **It is their choice if they wish to attempt to remedy the terms of the consent via lodgement of a Section 96 amended application;**
 2. **Council's position is that enabling the motel restaurant to operate for unconstrained general public use would not be substantially the same development as approved and a fresh development application would be**
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ADDENDUM REPORT

required and it is their choice if they wish to remedy the operating terms of the motel;

3. Council does not support intensification of the motel use (accommodation, restaurant and ancillary components) that results in increased demand for on street carparking and/or has the potential to adversely affect the amenity of the neighbourhood such as from noise and traffic; and
4. Council requires the motel (accommodation, restaurant and ancillary components) to operate in accordance with the development consent as it stands, and any unauthorised use is to cease immediately.

ADDENDUM REPORT

Development consent was issued on 18 February 2013 for alterations and additions to motel (staged). Various amendments have been approved to date mainly relating to design changes and ancillary use areas.

The motel has been very successful and has along with the restaurant received several industry awards.

The relevant recommended conditions of consent were:

9. *The facilities hereby approved within the motel building (such as restaurant/dining area, lounge room and outdoor food and beverage service area) are to be used by guests of the motel only.*
11. *This development consent approves the construction of alterations and additions to the existing motel only to be used by guests and staff of the motel only (i.e. persons using the premises for overnight accommodation within the motel). This application does not approve the use of the facilities hereby approved for functions, parties or the like or for catering to the general public.*
12. *The use of the motel for members of the general public or for functions, parties or the like will require an additional development approval.*

Council resolved to adopt the following conditions at the request of the proponent's consultant (submission dated 11 December 2012 provided at Attachment 2):

- 9 *The facilities hereby approved within the motel building (such as restaurant/dining area, lounge room and outdoor food and beverage service area) are to be used by guests of the motel only, with the exception of ancillary functions and events consistent with the use of the premises as a Motel and linked to guests residing on site.*
11. *This development consent approves the construction of alterations and additions to the existing motel only to be used by guests and staff of the motel only.*
12. *The use of the motel for members of the general public or for functions, parties or the like is permitted on an ancillary basis to the primary function of the premises as a Motel.*

The assessment report applied conditions for contributions based on no general public use of the restaurant. Car parking was also assessed on this basis.

Council has received two written complaints representing three nearby property owners. The complaints are provided at Confidential Attachment 4.

The issues are summarised as follows:

- New Years' Eve party noise
- General public use of the restaurant and bar
- Car parking and traffic impact
- Rubbish bin odour/collection location

ADDENDUM REPORT

- Provision of no parking zone

Halcyon House have provided a response to the issues which is provided at Attachment 3.

The key outstanding issues are:

- General public use of the restaurant
- Exceedance of the hours of operation on New Years' Eve permitted by the consent
- Provision by Council of a no parking zone in Cypress Crescent.

General Public Use

If an application is submitted for general public use of the restaurant, the impacts on the neighbourhood would need to be carefully considered by Council. Any further intensification that adversely affected the neighbourhood by noise, on street parking overflow, traffic cohesion would be undesirable.

It is recommended that Council advise the proponents that it does not support an intensification of the use that creates further increases adverse impacts.

The site has existing use rights for a motel, however, those rights are defined and confined by Development Consent DA12/0170 which has been carried out for the intensification of the existing use.

Section 107 of the Environmental Planning and Assessment Act says:

107 Continuance of and limitations on existing use

- (1) *Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.*
- (2) *Nothing in subsection (1) authorises:*
 - (a) *any alteration or extension to or rebuilding of a building or work, or*
 - (b) *any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or*
 - (c) *without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or*
 - (d) *the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 80A (1) (b), or*
 - (e) *the continuance of the use therein mentioned where that use is abandoned.*

ADDENDUM REPORT

- (3) *Without limiting the generality of subsection (2) (e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.*

Section 107(2)(d) requires compliance with the development consent. The motel is operating outside the terms of the development consent and needs to comply with the consent or seek development consent for intensification of the motel use.

New Years Eve 2016/17

Liquor and Gaming NSW permit extended trading hours on New Years' Eve. Accordingly it is considered appropriate for this incident that a warning letter be issued to Halcyon House advising that the operating hours conditions of consent need to be complied with.

No Parking zone in Cypress Crecent

Council's Traffic Committee considered this issue in May 2016 and did not support prohibitive parking as no significant safety issue was identified however Council's traffic Officers continue to monitor the site.

OPTIONS:

1. As per the recommendations;
2. Invite the proponents to lodge a fresh development application seeking to remedy the terms of the operation so that the current motel restaurant use is regularised;
3. Issue no warning letter; or
4. Issue a Penalty infringement Notice for the hours of operation breach.

CONCLUSION:

Unconfined use has, and is likely to, in to the future result in unacceptable and unmanageable impacts on the neighbourhood. The site and location is not suitable for a general purpose restaurant and its use should be confined.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

ADDENDUM REPORT

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Adam Smith email dated 10 May 2017 on behalf of the proponents (ECM 4535776)

Attachment 2. Planit submission dated 11 December 2012 (ECM 4535787)

Attachment 3. Halcyon House response dated 14 March 2017 (ECM 4535789)

(Confidential) Attachment 4. 2 submissions (ECM 4535790)
